

STATE OF MICHIGAN  
COURT OF APPEALS

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JOY MANAGEMENT COMPANY,

Plaintiff-Appellant,

v

COUNTY OF WAYNE and OFFICE OF THE  
WAYNE COUNTY CLERK,

Defendants-Appellees.

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UNPUBLISHED

February 5, 1999

No. 205159

Wayne Circuit Court

LC No. 96-611329 CZ

Before: Hoekstra, P.J., and Doctoroff and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(7). We affirm.

Plaintiff filed a complaint against defendants on March 13, 1996, alleging that it sought to prosecute an action as a class action on behalf of individuals that paid or will pay excessive copying fees for copying documents at the Wayne County Record and Duplication Department. Plaintiff argued that, because the fees for duplication by the Wayne County Record and Duplication Department are excessive, they constitute an unconstitutional tax in violation of Const 1963, art 4 § 32.

Previously, on March 21, 1995, plaintiff had filed a class action against Wayne County and the Wayne County Register of Deeds alleging excessive recording fees. That case, *Joy Management Company v County of Wayne and the Wayne County Register of Deeds* (Wayne County Circuit Court docket no. 95-507958 CZ) was consolidated with *Dora Ewing v County of Wayne and the Wayne County Register of Deeds* (Wayne County Circuit Court docket no. 95-431525 CZ). In the 1995 litigation, plaintiff complained that the fees for copying, recording and conducting tract index searches charged by the Register of Deeds under ordinance 87-484 constituted a tax. On October 19, 1995, the parties in that case signed a stipulation and settlement which was approved by the trial court on December 19, 1995. On March 14, 1996, plaintiff signed a release which specifically provided for the release and discharge of any and all claims against Wayne County and the Wayne County Register of Deeds

arising from or connected with any matter raised or referred to in the pleadings in this litigation or during discovery in this litigation, including but not limited to any of the following: (a) the payment of any fee authorized by Ordinance 87-484 and Ordinance 87-484 as amended, including recording fees, copying fees or tract index search fees to the Wayne County Register of Deeds during the Class Period.

In the instant case, defendants moved for summary disposition pursuant to MCR 2.116(C)(7), arguing that the release plaintiff signed in the 1995 litigation barred plaintiff from maintaining the present suit because, in addition to establishing the fees to be charged by the Wayne County Register of Deeds, ordinance 87-484 and ordinance 87-484 as amended established the fees to be charged by the Wayne County Clerk's office. The trial court agreed, and granted defendants' motion for summary disposition pursuant to MCR 2.116(C)(7).

Plaintiff first argues that the trial court erred in granting summary disposition pursuant to MCR 2.116(C)(7) because the release plaintiff signed in the 1995 litigation does not bar the present suit against defendants. Specifically, plaintiff contends that the release only covered claims relating to fees charged by the Wayne County Register of Deeds, and did not extend to claims relating to fees charged by the Wayne County Clerk's office. We disagree. We review de novo a grant of summary disposition pursuant to MCR 2.116(C)(7). *Smith v YMCA of Benton Harbor/St Joseph*, 216 Mich App 552, 554; 550 NW2d 262 (1996). When reviewing a motion for summary disposition pursuant to MCR 2.116(C)(7), we consider all documentary evidence submitted by the parties and, where appropriate, construe the pleadings in favor of the plaintiff. *Id.* Summary disposition of a plaintiff's complaint is proper where there exists a valid release of liability between the parties. MCR 2.116(C)(7); *Adell v Sommers, Schwartz, Silver and Schwartz, PC*, 170 Mich App 196, 201; 428 NW2d 26 (1988).

A release from liability is valid if it is fairly and knowingly made. *Adell, supra*, 170 Mich App 201. The scope of a release is governed by the intent of the parties as expressed in the release. *Id.* If the text of the release is unambiguous, the parties' intentions must be ascertained from the plain, ordinary meaning of the language of the release. *Rinke v Automotive Moulding Co*, 226 Mich App 432, 435; 573 NW2d 344 (1997). A release is ambiguous only if its language is reasonably susceptible to more than one interpretation. *Id.* The fact that the parties dispute the meaning of the release does not, by itself, establish an ambiguity. *Wyrembelski v City of St Clair Shores*, 218 Mich App 125, 127; 553 NW2d 651 (1996).

Here, the text of the release is unambiguous. Plaintiff released all claims "arising from or connected with any matter raised or referred to in the pleadings in this litigation or during discovery in this litigation." Defendants presented evidence that, during discovery in the 1995 litigation, plaintiff Dora Ewing indicated that her complaint against Wayne County related to fees charged by the Wayne County Clerk's office as well as the Register of Deeds. Furthermore, the release in the 1995 litigation specifically states that all matters are released "including but not limited to any of the following: (a) the payment of any fee authorized by Ordinance 87-484 and Ordinance 87-484 as amended including recording fees, copying fees or tract index search fees to the Wayne County Register of Deeds during the Class Period." It is undisputed that Ordinance 87-484 and Ordinance 87-484 as amended established the copying fees charged by the Wayne County Clerk's office. Accordingly, because the

broad, but unambiguous, language of the release indicated the parties' intent to release the instant claim brought against Wayne County and the Wayne County Clerk's office, the trial court properly granted defendants' motion for summary disposition pursuant to MCR 2.116(C)(7).

Plaintiff next argues that the trial court erred by failing to permit plaintiff to amend its complaint to add an additional party. We disagree. The grant or denial of leave to amend is within the trial court's discretion. *Weymers v Khera*, 454 Mich 639, 654; 563 NW2d 647 (1997). This Court will not reverse a trial court's decision regarding leave to amend unless it constituted an abuse of discretion that resulted in injustice. *Id.*; *Phillips v Deihm*, 213 Mich App 389, 393; 541 NW2d 566 (1995). Reasons justifying a denial of leave to amend include undue delay, bad faith or dilatory motive, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the defendant, or futility. *Weymers, supra*, 454 Mich 658. The failure of the trial court to specify its reasons for denying leave to amend requires reversal unless the amendment would be futile. *Noyd v Claxton, Morgan, Flockhart & VanLiere*, 186 Mich App 333, 340; 463 NW2d 268 (1990). An amendment would be futile if, ignoring the substantive merits of the claim, it is legally insufficient on its face. *Hakari v Ski Brule, Inc*, 230 Mich App 352, 355; 584 NW2d 345 (1998).

Plaintiff asserts that it sought to amend its complaint to add another plaintiff "to avoid the Defendants' stated affirmative defense that Joy Management Company was barred from suit by the 1995 litigation." However, plaintiff's proposed amendment to add an additional plaintiff to the suit would have been futile. Even if the amendment had been allowed, plaintiff, itself, would still be barred from maintaining the instant action on the basis of the release. Accordingly, the trial court did not abuse its discretion in denying plaintiff's motion to amend its complaint.

Plaintiff next argues that the trial court erred in dismissing plaintiff's discovery motion and in granting defendants' summary disposition motion before discovery was complete. We disagree. This Court reviews a trial court's grant or denial of a motion to compel discovery for an abuse of discretion. *Michigan Millers Mutual Ins Co v Bronson Plating Co*, 197 Mich App 482, 494; 496 NW2d 373 (1992).

Generally, summary disposition is premature if granted before discovery on a disputed issue is complete. *State Treasurer v Sheko*, 218 Mich App 185, 190; 553 NW2d 654 (1996). However, summary disposition is not premature if the discovery does not stand a fair chance of uncovering factual support for opposing the motion for summary disposition. *Id.* Here, the trial court granted summary disposition on the ground that the release barred the instant action. There is no indication in the record that plaintiff attempted to discover that a question of fact existed regarding the intent of the parties when they signed the release in the 1995 action, or that the nature of the instant action differed substantially from the nature of the 1995 litigation. Plaintiff's discovery request focused on the costs of copies at the Wayne County Clerk's office. Any information that plaintiff would have discovered regarding the costs of copies at the Wayne County Clerk's office would not have uncovered factual support to oppose defendants' motion for summary disposition on the ground that plaintiff was barred by release from maintaining the present action. Therefore, the trial court properly dismissed plaintiff's motion to compel discovery and properly granted defendant's motion for summary disposition before discovery was completed.

Plaintiff's final argument is that its motion for certification of the action as a class action should have been granted by the trial court. We disagree. This Court reviews a trial court's ruling regarding class certification for clear error. *Salesin v State Farm Fire & Casualty Co*, 229 Mich App 346, 371; 581 NW2d 781 (1998). Because the release barred plaintiff from individually bringing the instant action against defendants, it also barred plaintiff from bringing the action as representative of a class. See *Tucich v Dearborn Indoor Racquet Club*, 107 Mich App 398, 407; 309 NW2d 615 (1981). Accordingly, the trial court properly denied plaintiff's motion for certification of the action as a class action.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Martin M. Doctoroff

/s/ Peter D. O'Connell